

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

**JOHN P. KEANE,**

***Plaintiff***

**v.**

**WARREN HURLEY, et al.,**

***Defendants***

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***Civil No. 90-0190 P***

***RECOMMENDED DECISION ON MOTION TO DISMISS***

Defendants Warren Hurley and Roland Payne move to dismiss this diversity action in tort for lack of personal jurisdiction. The suit arises from alleged injuries sustained by the plaintiff in the Province of British Columbia, Canada on or about August 11, 1984 when an automobile in which he was riding as a passenger, and which was then owned by defendant Payne and operated by defendant Hurley, overturned on a highway.

The exercise of personal jurisdiction is governed by Maine's long-arm statute, 14 M.R.S.A. ' 704-A, which permits personal jurisdiction over nonresidents to the full extent allowed by the due process clause of the Fourteenth Amendment. *See, e.g., Caluri v. Rypkema*, 570 A.2d 830, 831 (Me.), *cert. denied*, 111 S. Ct. 62 (1990). To meet due process requirements, a defendant must have minimum contacts with the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985).

The burden is on the plaintiff to prove facts necessary to sustain jurisdiction. *Dalmau Rodriguez v. Hughes Aircraft Co.*, 781 F.2d 9, 10 (1st Cir. 1986). The court may weigh affidavits and other relevant materials to assist it in finding jurisdictional facts. 5A C. Wright & A. Miller, *Federal Practice and Procedure* ' 1351 at 253-56 (1990). At the pretrial stage, the plaintiff need only make out

a *prima facie* showing. *Triple-A Baseball Club Assoc. v. Northeastern Baseball, Inc.*, 655 F. Supp. 513, 533-34 (D. Me.), *aff'd in part, rev'd in part on other grounds*, 832 F.2d 214 (1st Cir. 1987), *cert. denied*, 485 U.S. 935 (1988).

I find the following facts established in an affidavit submitted by the plaintiff. At the time of the accident the plaintiff and the defendants were en route from Alaska, where they had worked during the summer, to Montana, where the plaintiff planned to meet his brother and from there fly to Maine. Following the mishap, the plaintiff was hospitalized in Canada for five days and then returned home to Maine. Since returning to Maine, the plaintiff has consulted several physicians and received extensive treatment for his injuries. There is no indication that either defendant, both of whom are citizens of other states, has ever been in Maine or had any other connection with Maine.

It is apparent from the record before the court that the defendants have had no contacts whatever with the state of Maine, let alone the requisite minimum contacts necessary to sustain personal jurisdiction. The catch-all provision of Maine's long-arm statute on which the plaintiff relies<sup>1</sup> expressly conditions the assertion of personal jurisdiction on a satisfaction of federal constitutional requirements, which necessarily include the due process requirements enumerated in the caselaw. Because there has been no showing that either defendant has had any contacts with Maine, no basis whatever exists for asserting jurisdiction over their persons.<sup>2</sup>

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<sup>1</sup> The statute provides, *inter alia*, that a person, whether or not a citizen or resident of Maine, who "[m]aintain[s] any . . . relation to . . . persons . . . which affords a basis for the exercise of jurisdiction by the courts of [Maine] consistent with the Constitution of the United States," submits himself to the jurisdiction of Maine courts. 14 M.R.S.A. § 704-A(2).

<sup>2</sup> In the absence of any contacts, no analysis need or can be made as to the sufficiency of contacts and whether they comport with "traditional conceptions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). See also *Burger King*, 471 U.S. at 475-76; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

*Labbe v. Nissen Corp.*, 404 A.2d 564 (Me. 1979), relied on by the plaintiff, is inapposite. In that case the court sustained the assertion of personal jurisdiction over a foreign corporation having no office or place of business in Maine in a personal injury claim involving a Maine citizen injured by the corporation's product in England. In doing so, however, the court expressly determined that the corporation had engaged in continuous and systematic activities in Maine. *Id.* at 573.<sup>3</sup>

For the foregoing reasons, I recommend that the defendants' motion to dismiss for lack of personal jurisdiction be **GRANTED**.

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<sup>3</sup> *Labbe* was decided before the Supreme Court rendered its decision in *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 (1984). It is questionable whether the foreign corporation's contacts would have been found sufficient to satisfy the strict standard articulated in *Helicopteros* for asserting personal jurisdiction in general jurisdiction cases such as *Labbe*.

**NOTICE**

*A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

*Dated at Portland, Maine this 4th day of February, 1991.*

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*David M. Cohen  
United States Magistrate Judge*